



March 26, 2003

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# ENGROSSED

## HOUSE BILL No. 1798

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DIGEST OF HB 1798 (Updated March 24, 2003 12:39 PM - DI 52)

**Citations Affected:** IC 8-1.5; IC 36-9.

**Synopsis:** Storm water management. Allows a municipality under certain circumstances to adopt an ordinance providing for the control of any or all of its storm water facilities by the board that controls the municipality's municipally owned utilities. Provides that, if a municipality adopts such an ordinance, the municipality is not subject to certain procedures prescribed for the sharing of costs of repairing or replacing a combined storm water and sanitary sewer system. Enumerates factors that may be used to establish user fees and allows different fee schedules based on certain factors. Allows a county other than Marion County to establish a department of storm water management under certain circumstances. (Current law provides that the department of public works acts as the department of storm water management in Marion County.) Provides that the drainage board of a county that has not adopted an ordinance to establish a department of storm water management may establish fees for services provided by the board to address issues of storm water quality and quantity. Makes conforming changes.

**Effective:** Upon passage; July 1, 2003.

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### Bottorff, Scholer

(SENATE SPONSORS — GARD, LEWIS)

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January 21, 2003, read first time and referred to Committee on Environmental Affairs.  
February 3, 2003, amended, reported — Do Pass.  
February 13, 2003, read second time, amended, ordered engrossed.  
February 14, 2003, engrossed.  
February 17, 2003, read third time, passed. Yeas 82, nays 11.

SENATE ACTION

February 24, 2003, read first time and referred to Committee on Environmental Affairs.  
March 25, 2003, amended, reported favorably — Do Pass.

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EH 1798—LS 7629/DI 101+



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March 26, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1798

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A BILL FOR AN ACT to amend the Indiana Code concerning  
utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1.5-3-3 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The legislative  
3 body of a municipality may, by ordinance, provide for the control of  
4 any or all of its municipally owned utilities by:

5 (1) the municipal works board;

6 (2) a board consisting of the members of the municipal legislative  
7 body;

8 (3) a utility service board established under subsection ~~(e)~~ (f) or  
9 established before January 1, 1983, under IC 8-1-2-100  
10 (repealed); or

11 (4) the board of directors of a department of waterworks  
12 established under IC 8-1.5-4.

13 **After receipt of notification from the department of environmental**  
14 **management that the municipality will be subject to storm water**  
15 **regulation under 327 IAC 15-13, the legislative body of a**  
16 **municipality also may adopt an ordinance under this subsection to**  
17 **provide for the control of any or all of its storm water facilities by**

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a board described in subdivisions (1) through (4). An ordinance granting control of any or all of a municipality's storm water facilities to a board described in this subsection may be separate from or combined with an ordinance granting control of the municipality's municipally owned utilities to a board described in this subsection.

(b) If, at the time an ordinance is adopted under subsection (a) to grant control of any or all of the municipality's storm water facilities to a board described in subsection (a) the municipality has a department of storm water management under IC 8-1.5-5, the ordinance must specify a procedure for the transition of control of the affected storm water facilities from the board of directors of the department of storm water management to the board described in subsection (a).

(c) The registered voters of a municipality may file a petition addressed to the legislative body requesting that the question of the creation of a utility service board be submitted to a referendum. The petition must be signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot.

~~(c)~~ (d) Within thirty (30) days after a petition is filed, the municipal clerk shall certify to the legislative body and to the county election board that a sufficient petition has been filed.

~~(d)~~ (e) Following certification, the legislative body shall submit the question of the creation of a utility service board to a referendum at the next election. The question shall be submitted to the registered voters of the municipality by placement on the ballot in the form prescribed by IC 3-10-9-4 and must state:

"Shall the legislative body of the municipality of \_\_\_\_\_ adopt an ordinance providing for the appointment of a utility service board to operate \_\_\_\_\_ (Insert name of utility here)?"

~~(e)~~ (f) If a majority of the voters voting on the question vote for the creation of a utility service board, the legislative body shall, by ordinance, establish a utility service board consisting of not less than three (3) nor more than seven (7) members. Not more than two-thirds (2/3) of the members may be of the same political party. All members must be residents of the area served by the board. The ordinance must provide for:

- (1) a majority of the members to be appointed by the executive and a minority of the members to be appointed by the legislative body;
- (2) the terms of the members, which may not exceed four (4)



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years, with initial terms prescribed so that the members' terms will be staggered;

(3) the salaries, if any, to be paid to the members; and

(4) the selection by the board of a chairman, who shall not be considered the head of a department for purposes of IC 36-4-9-2.

~~(f)~~ (g) The registered voters of the municipality may also file a petition requesting that the question of the abolition of the utility service board be submitted to a referendum. The procedure for filing of the petition and the referendum is the same as that prescribed by subsections ~~(b)~~ (c) through ~~(d)~~ (e).

SECTION 2. IC 8-1.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter applies to each:

(1) municipality; and

(2) county that:

(A) does not have a consolidated city; and

(B) receives notification from the department of environmental management that the county will be subject to storm water regulation under 327 IAC 15-13;

that adopts the provisions of this chapter by ordinance.

SECTION 3. IC 8-1.5-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. The definitions in IC 36-1-2 apply throughout this chapter.

SECTION 4. IC 8-1.5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "board" means the following:

(1) For a consolidated city, the board of public works established by IC 36-3-5-6.

(2) For all other municipalities, the:

(A) board of directors described in section 4 of this chapter; or

(B) board that controls the municipality's municipally owned utilities under IC 8-1.5-3-3(a) if the municipality has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the municipality's storm water facilities by the board that controls the municipality's municipally owned utilities.

(3) For a county:

(A) the county executive;

(B) the county surveyor (or the county surveyor's designee); and

(C) one (1) engineer licensed under IC 25-31 appointed by

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the county executive;  
as specified in the ordinance adopting the provisions of this  
chapter.

SECTION 5. IC 8-1.5-5-3 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this  
chapter, "department" means the following:

- (1) For a consolidated city, the department of public works.
- (2) For all other municipalities, the department of storm water  
management established under section 4 of this chapter.

**(3) For a county, the department of storm water management  
established under section 4.5 of this chapter.**

SECTION 6. IC 8-1.5-5-4 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) This section  
applies to all municipalities except a consolidated city.

(b) If the legislative body of a municipality adopts the provisions of  
this chapter by ordinance, a department of storm water management is  
established and is controlled by a board of directors.

(c) Except as provided in ~~subsection~~ **subsections (f) and (g)**, the  
board consists of three (3) directors. The executive of the municipality  
shall appoint the directors, not more than two (2) of whom may be of  
the same political party.

(d) Except as provided in ~~subsection~~ **subsections (f) and (g)**, the  
legislative body shall prescribe, by ordinance, the terms of the  
directors. However, the legislative body must prescribe the initial terms  
of the directors so that they will be staggered.

(e) The executive may remove a director at any time when, in the  
judgment of the executive, it is for the best interest of the department.

(f) If a second class city has a department of public sanitation under  
IC 36-9-25, the executive of the city may appoint the members of the  
board of sanitary commissioners as the board of directors of the  
department of storm water management. The terms of the members of  
the board of directors are the same as the terms of the members of the  
board of sanitary commissioners under IC 36-9-25-4.

**(g) If a municipality:**

- (1) has a board that controls the municipality's municipally  
owned utilities under IC 8-1.5-3-3(a); and**
- (2) has adopted an ordinance under IC 8-1.5-3-3(a) that  
provides for the control of any or all of the municipality's  
storm water facilities by the board that controls the  
municipality's municipally owned utilities;**

**the members of the board that controls the municipality's  
municipally owned utilities shall serve as the board of directors of**



the department of storm water management, subject to any transition procedure specified in the ordinance under IC 8-1.5-3-3(b). The terms of the members of the board of directors are the same as the terms of the members of the board that controls the municipality's municipally owned utilities under IC 8-1.5-3-3(a), subject to the completion of any transition procedure specified in the ordinance under IC 8-1.5-3-3(b).

(h) A member of the board of directors of the department of storm water management **who:**

(1) is appointed under subsection (f); or

(2) is a member of the board under subsection (g) and receives a salary as a member of the board that controls the municipality's municipally owned utilities;

is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

SECTION 7. IC 8-1.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) This section applies to a county.

(b) If the county executive adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) An ordinance adopted under this section shall provide for the appointment of:

(1) the members of the county executive;

(2) the county surveyor (or the county surveyor's designee); and

(3) one (1) engineer licensed under IC 25-31 appointed by the county executive;

as the board of directors of the department. The term of office of a member of the board who is appointed from the membership of the county executive is coextensive with the member's term of office on the county executive. The term of the surveyor or designee as a member of the board is coextensive with the surveyor's term of office. The ordinance must prescribe the term of the engineer appointed under subdivision (3).

(d) The county executive may remove the engineer appointed under subsection (c)(3) at any time when, in the judgment of the executive, it is for the best interest of the department.

(e) A member of the board of directors appointed under subsection (c)(1) or (c)(2) is not entitled to a salary or per diem for



1 serving as a member of the board of directors. However, a member  
 2 shall be reimbursed for necessary expenses incurred by the  
 3 member in the performance of official duties.

4 SECTION 8. IC 8-1.5-5-5 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The  
 6 legislative body shall, in the ordinance adopting the provisions of this  
 7 chapter ~~create~~ **creates** a special taxing district that includes the  
 8 following:

9 (1) For a consolidated city, all of the territory of the county  
 10 containing the consolidated city.

11 (2) For all other municipalities, all territory within the corporate  
 12 boundaries of the municipality.

13 **(3) For a county, all the territory in the county that is not**  
 14 **located in a municipality.**

15 (b) ~~As to each municipality to which this chapter applies, including~~  
 16 ~~a consolidated city;~~ All the territory within the district constitutes a  
 17 special taxing district for the purpose of providing for the collection  
 18 and disposal of storm water of the district in a manner that protects the  
 19 public health and welfare and for the purpose of levying special benefit  
 20 taxes for purposes of storm water collection and disposal. All ~~area~~  
 21 **territory** in the district and all ~~area~~ **territory** added to the district is  
 22 considered to have received a special benefit from the storm water  
 23 collection and disposal facilities of the district equal to or greater than  
 24 the special taxes imposed on the ~~area by~~ **territory under** this chapter  
 25 in order to pay all or part of the costs of such facilities.

26 SECTION 9. IC 8-1.5-5-6 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The board  
 28 has the powers and duties prescribed by IC 8-1.5-3-4(a). In addition,  
 29 the board may:

30 (1) hold hearings following public notice;

31 (2) make findings and determinations;

32 (3) install, maintain, and operate a storm water collection and  
 33 disposal system;

34 (4) make all necessary or desirable improvements of the grounds  
 35 and premises under its control; and

36 (5) issue and sell bonds of the district in the name of the  
 37 ~~municipality~~ **unit served by the department** for the acquisition,  
 38 construction, alteration, addition, or extension of the storm water  
 39 collection and disposal system or for the refunding of any bonds  
 40 issued by the board.

41 (b) The board:

42 **(1)** has exclusive jurisdiction over the collection and disposal of

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storm water within the district; and

**(2) may require only surveying functions to be performed that are necessary to implement this chapter.**

SECTION 10. IC 8-1.5-5-7, AS AMENDED BY P.L.176-2002, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The acquisition, construction, installation, operation, and maintenance of facilities and land for storm water systems may be financed through:

(1) proceeds of special taxing district bonds of the storm water district;

(2) the assumption of liability incurred to construct the storm water system being acquired;

(3) service rates;

(4) revenue bonds; or

(5) any other available funds.

(b) The board, after **holding a hearing and obtaining the approval by of the legislative fiscal body of the municipality; unit served by the department**, may assess and collect user fees from all of the property of the storm water district for the operation and maintenance of the storm water system. **The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.**

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

**(d) The board may use one (1) or more of the following factors to establish the fees authorized by this section:**

**(1) A flat charge for each lot, parcel of property, or building.**

**(2) The amount of impervious surface on the property.**

**(3) The number and size of storm water outlets on the property.**

**(4) The amount, strength, or character of storm water discharged.**

**(5) The existence of improvements on the property that address storm water quality and quantity issues.**

**(6) The degree to which storm water discharged from the property affects water quality in the storm water district.**

**(7) Any other factors the board considers necessary.**

**(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:**





- 1           **(1) variations in the costs, including capital expenditures, of**  
 2           **furnishing services to various classes of users or to various**  
 3           **locations;**  
 4           **(2) variations in the number of users in various locations; and**  
 5           **(3) whether the property is used primarily for residential,**  
 6           **commercial, or agricultural purposes.**

7           SECTION 11. IC 8-1.5-5-12 IS AMENDED TO READ AS  
 8           FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) If the board  
 9           acquires a storm water system and assumes the liability incurred by the  
 10          seller to construct the storm water system, the principal and interest on  
 11          the liability so assumed shall be paid from the bond and interest  
 12          redemption account in the same manner as bonds of the district would  
 13          be paid, and the board shall set aside sufficient revenues to comply  
 14          with the requirements of the instrument creating the liability.

15          (b) A ~~municipality~~ **unit** acquiring a storm water system may not  
 16          assume any liability for the payment of a secured debt or charge other  
 17          than the obligation to apply the revenues in the manner prescribed in  
 18          the ordinance.

19          (c) The board may issue bonds in exchange for, or satisfaction of,  
 20          the liability assumed in the acquisition of a storm water system. The  
 21          bonds so issued may not be issued at less than ninety-seven percent  
 22          (97%) of the par value thereof in exchange for, or satisfaction of, the  
 23          liability. Notwithstanding section 13(c) of this chapter, bonds issued in  
 24          exchange for, or satisfaction of, the liability need not be sold in  
 25          accordance with IC 5-1-11. However, the interest rate on such bonds  
 26          may not exceed the average yield on municipal revenue bonds of  
 27          comparable credit rating and maturity as of the end of the week  
 28          immediately preceding the issuance of the bonds.

29          SECTION 12. IC 8-1.5-5-15 IS AMENDED TO READ AS  
 30          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) All money  
 31          received from bonds issued under this chapter shall be applied solely  
 32          to the acquisition, construction, repair, and maintenance of the storm  
 33          water system, the cost of the issuance of the bonds, and the creation of  
 34          any reserve for the bonds.

35          (b) Any holder of the bonds may bring a civil action to compel  
 36          performance of all duties required by this chapter of the board issuing  
 37          the bonds or of any officer of the board, including the following:

- 38               (1) Making and collecting reasonable and sufficient user fees  
 39               lawfully established for service rendered by the storm water  
 40               system.  
 41               (2) Segregating the income and revenues of the department.  
 42               (3) Applying the respective funds created under this chapter.



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(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the storm water system on behalf of the ~~municipality~~ **unit served by the department** and the bondholders, with power to:

(A) charge and collect user fees lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the storm water system; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the storm water system.

Under a sale ordered under subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the storm water system to collect and dispose of storm water for the ~~municipality~~ **unit served by the department** and its citizens.

SECTION 13. IC 8-1.5-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) **This section applies to a municipality.**

(b) The reasonable cost and value of any service rendered to the municipality by the storm water system by furnishing storm water collection and disposal shall be:

(1) charged against the municipality; and

(2) paid for in ~~monthly installments~~ as the service accrues out of: ~~the:~~

(A) ~~the~~ current revenues of the municipality, collected or in process of collection; ~~and~~

(B) ~~the~~ tax levy of the municipality made by it to raise money to meet its necessary current expenses;

(C) ~~the~~ user fees assessed by the municipality under section 7 of this chapter; or

(D) any combination of the sources under clauses (A), (B), and (C).

~~(b)~~ (c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

(d) **Before a municipality imposes the tax levy referred to in subsection (b)(2)(B), the fiscal body of the municipality must give public notice and hold a hearing on the proposal for the tax levy.**

SECTION 14. IC 8-1.5-5-16.5 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. (a) This section applies**  
 3 **to a county.**

4 **(b) The reasonable cost and value of any service rendered to the**  
 5 **county by the storm water system by furnishing storm water**  
 6 **collection and disposal shall be:**

7 **(1) charged against all the territory in the county, except**  
 8 **territory within a municipality; and**

9 **(2) paid for as the service accrues out of:**

10 **(A) the current revenues of the county, collected or in**  
 11 **process of collection;**

12 **(B) the tax levy of the county made by the county to raise**  
 13 **money to meet the county's necessary current expenses;**

14 **(C) the user fees assessed by the county under section 7 of**  
 15 **this chapter; or**

16 **(D) any combination of the sources under clauses (A), (B),**  
 17 **and (C).**

18 **(c) The compensation for the service provided to the county**  
 19 **shall, in the manner prescribed by this chapter, be treated as**  
 20 **revenues of the system and paid into the funds created under this**  
 21 **chapter.**

22 **(d) Before a county imposes the tax levy referred to in**  
 23 **subsection (b)(2)(B), the fiscal body of the county must give public**  
 24 **notice and hold a hearing on the proposal for the tax levy.**

25 SECTION 15. IC 8-1.5-5-20 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. All real  
 27 property, rights-of-way, or other property acquired by purchase or  
 28 appropriation shall be taken and held in the name of the ~~municipality~~  
 29 **unit served by the department.**

30 SECTION 16. IC 8-1.5-5-21 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) To procure  
 32 money to pay for the required property and the acquisition, erection,  
 33 and construction of the proposed work, and in anticipation of the  
 34 collection of the special benefit tax, the board may issue, in the name  
 35 of the ~~municipality~~, **unit served by the department**, special taxing  
 36 district bonds of the storm water district. The bonds may not exceed the  
 37 total estimated cost of the work and property to be acquired as provided  
 38 for in the resolution, including:

39 **(1) all expenses necessarily incurred for supervision and**  
 40 **inspection during the period of construction; and**

41 **(2) expenses actually incurred preliminary to the acquiring of the**  
 42 **necessary property and the construction of the work, including the**

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cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.

(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the ~~municipal~~ fiscal officer, who shall then prepare the bonds. The ~~municipal~~ executive shall execute the bonds, and the fiscal officer shall attest the bonds.

(c) The board may not issue bonds of the storm water district, payable by a special benefit property tax, when the total of the outstanding bonds of the district that are payable from a special benefit property tax, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. For purposes of this section, bonds are not considered to be outstanding bonds if the payment has been provided for by an irrevocable deposit in escrow of government obligations sufficient to pay the bonds when due or called for redemption.

(d) The bonds are not a corporate obligation or indebtedness of the ~~municipality unit~~ but are an indebtedness of the storm water district. The bonds and interest are payable:

- (1) out of a special benefit tax levied upon all of the property of the storm water district; or
- (2) by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued.

SECTION 17. IC 8-1.5-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) To raise the necessary revenues to pay for the bonds issued and the interest on the bonds, the board:

- (1) after approval by the ~~legislative~~ **fiscal** body of the ~~municipality~~, **unit served by the department**, shall levy a special benefit tax upon all the property of the storm water district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and
- (2) shall certify the tax levied each year to the fiscal ~~officers~~ **officer** of the ~~municipality and of the county in which the storm water district is located~~, **unit served by the department** at the same time ~~the levy of the municipality is and in the same manner as other levies of the unit are certified~~.

The tax levied and certified shall be estimated and entered upon the tax

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duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, and enforced.

(b) In fixing the amount of the necessary levy, the board:

(1) shall consider the amount of revenues derived by the board from the operation of the storm water system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the storm water system; and

(2) may, in lieu of making the levy in this section, set aside by resolution a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be deposited in the bond and interest redemption account.

SECTION 18. IC 8-1.5-5-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The board may not issue any bonds authorized by this chapter until it has secured the approval for the issuance of the bonds from the ~~legislative~~ **fiscal** body of the ~~municipality~~ **unit served by the department**.

(b) IC 6-1.1-20 applies to the issuance of bonds under this chapter which are or may be payable from the special benefit property tax.

SECTION 19. IC 8-1.5-5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 24. (a) **This section does not apply to a municipality in which the board is the entity that owns or maintains the municipality's sanitary sewer system under an ordinance adopted by the municipality under IC 8-1.5-3-3(a).**

(b) Whenever work on a storm water system (that is combined with a sanitary sewer system) necessitates the repair or replacement of all or part of a sanitary sewer system, the entity that owns or maintains the sanitary sewer system shall assume a proportionate share of the cost of repairing or replacing the sanitary sewer system.

~~(b)~~ (c) The board and the entity that owns or manages the sanitary sewer system shall negotiate the division of the costs described in subsection ~~(a)~~ (b).

~~(c)~~ (d) If the parties cannot agree to a division of the costs, they shall petition the circuit court of the county where the majority of the systems are located to divide the costs. The circuit court shall hold a hearing on the division of costs within sixty (60) days after receiving the petition. The court shall publish notice of the hearing in accordance with IC 5-3-1. The decision of the court is binding on both parties.

SECTION 20. IC 8-1.5-5-27 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE



UPON PASSAGE]: Sec. 27. If the department:

(1) uses private property for storm water collection or disposal; and

(2) obtains the consent of the owner of the private property to maintain the private property;

the department shall maintain the private property.

SECTION 21. IC 36-9-27-114 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 114. (a) This section applies to a county that has not adopted an ordinance to adopt the provisions of IC 8-1.5-5.

(b) As used in this section, "storm water improvements" means storm sewers, drains, storm water retention or detention structures, dams, or any other improvements used for the collection, treatment, and disposal of storm water.

(c) The drainage board of a county may establish fees for services provided by the board to address issues of storm water quality and quantity, including the costs of constructing, maintaining, operating, and equipping storm water improvements.

(d) Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(e) The fees are payable by the owner of each lot, parcel of real property, or building that uses or is served by storm water improvements that address storm water quality and quantity. Unless the board finds otherwise, the storm water improvements are considered to benefit every lot, parcel of real property, or building that uses or is served by the storm water improvements, and the fees shall be billed and collected accordingly.

(f) The board may use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each lot, parcel of property, or building.

(2) The amount of impervious surface on the property.

(3) The number and size of storm water outlets on the property.

(4) The amount, strength, or character of storm water discharged.

(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) The degree to which storm water discharged from the property affects water quality in the district.

(7) Any other factors the board considers necessary.

(g) The board may exercise reasonable discretion in adopting



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different schedules of fees, or making classifications in schedules of fees, based on:

(1) variations in the costs, including capital expenditures, of addressing storm water quality and quantity for various classes of users or for various locations;

(2) variations in the number of users in various locations; and

(3) whether the property is used primarily for residential, commercial, or agricultural purposes.

(h) The compensation for the service provided to the county shall, in the manner prescribed by IC 8-1.5-5-16.5, be treated as revenue of the storm water system and paid into the accounts created under IC 8-1.5-5.

SECTION 22. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1798, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 2 through 6, begin a new line double block indented and insert:

- "(A) the county executive;**
- (B) the county surveyor (or the county surveyor's designee); and**
- (C) one (1) engineer licensed under IC 25-31 appointed by the county executive;".**

Page 2, delete lines 25 through 30, begin a new line block indented and insert:

- "(1) the members of the county executive;**
- (2) the county surveyor (or the county surveyor's designee); and**
- (3) one (1) engineer licensed under IC 25-31 appointed by the county executive;".**

Page 2, line 33, delete "or the drainage board under subdivision (1)".

Page 2, line 34, delete "or (2), respectively,".

Page 2, line 35, delete "or the drainage board. If the county" and insert ".".

Page 2, delete line 36.

Page 2, line 37, delete "subdivision (1), the" and insert "**The**".

Page 2, line 38, delete "If an" and insert "**The ordinance must prescribe the term of the engineer appointed under subdivision (3).**".

Page 2, delete lines 39 through 42.

Page 3, line 1, delete "a director" and insert "**the engineer**".

Page 8, line 31, delete "(a) Two (2) or more storm water" and insert "**If the department:**

- (1) uses private property for storm water collection or disposal; and**
- (2) obtains the consent of the owner of the private property to maintain the private property;**

**the department shall maintain the private property.**

SECTION 18. IC 8-1.5-5-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 28. A person may not be required to screen a storm water outfall if the pipe diameter of the storm water outfall is less than twenty-four (24) inches."**

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Page 8, delete lines 32 through 38.  
Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.  
(Reference is to HB 1798 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 12, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1798 be amended to read as follows:

Page 3, line 13, delete "that has adopted the provisions of" and insert ".".

Page 3, delete line 14.

Page 3, delete lines 41 through 42, begin a new paragraph and insert:

"(b) The board:

(1) has exclusive jurisdiction over the collection and disposal of storm water within the district; **and**

(2) **may require only surveying functions to be performed that are necessary to implement this chapter.**"

Page 6, line 15, delete "that has adopted the" and insert "; **and**".

Page 6, delete line 16.

Page 8, line 33, delete "screen" and insert "**map, screen, or otherwise monitor**".

Page 10, between lines 5 and 6, begin a new paragraph and insert:

**"(h) The compensation for the service provided to the county shall, in the manner prescribed by IC 8-1.5-5-16.5, be treated as revenue of the storm water system and paid into the accounts created under IC 8-1.5-5."**

(Reference is to HB 1798 as printed February 4, 2003.)

BOTTORFF

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1798 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1.5-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The legislative body of a municipality may, by ordinance, provide for the control of any or all of its municipally owned utilities by:

(1) the municipal works board;

(2) a board consisting of the members of the municipal legislative body;

(3) a utility service board established under subsection ~~(e)~~ (f) or

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established before January 1, 1983, under IC 8-1-2-100 (repealed); or

(4) the board of directors of a department of waterworks established under IC 8-1.5-4.

**The legislative body of a municipality also may adopt an ordinance under this subsection to provide for the control of any or all of its storm water facilities by a board described in subdivisions (1) through (4). An ordinance granting control of any or all of a municipality's storm water facilities to a board described in this subsection may be separate from or combined with an ordinance granting control of the municipality's municipally owned utilities to a board described in this subsection.**

**(b) If, at the time an ordinance is adopted under subsection (a) to grant control of any or all of the municipality's storm water facilities to a board described in subsection (a) the municipality has a department of storm water management under IC 8-1.5-5, the ordinance must specify a procedure for the transition of control of the affected storm water facilities from the board of directors of the department of storm water management to the board described in subsection (a).**

**(c)** The registered voters of a municipality may file a petition addressed to the legislative body requesting that the question of the creation of a utility service board be submitted to a referendum. The petition must be signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot.

**(d)** Within thirty (30) days after a petition is filed, the municipal clerk shall certify to the legislative body and to the county election board that a sufficient petition has been filed.

**(e)** Following certification, the legislative body shall submit the question of the creation of a utility service board to a referendum at the next election. The question shall be submitted to the registered voters of the municipality by placement on the ballot in the form prescribed by IC 3-10-9-4 and must state:

"Shall the legislative body of the municipality of \_\_\_\_\_ adopt an ordinance providing for the appointment of a utility service board to operate \_\_\_\_\_ (Insert name of utility here)?"

**(f)** If a majority of the voters voting on the question vote for the creation of a utility service board, the legislative body shall, by ordinance, establish a utility service board consisting of not less than three (3) nor more than seven (7) members. Not more than two-thirds (2/3) of the members may be of the same political party. All members

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must be residents of the area served by the board. The ordinance must provide for:

- (1) a majority of the members to be appointed by the executive and a minority of the members to be appointed by the legislative body;
- (2) the terms of the members, which may not exceed four (4) years, with initial terms prescribed so that the members' terms will be staggered;
- (3) the salaries, if any, to be paid to the members; and
- (4) the selection by the board of a chairman, who shall not be considered the head of a department for purposes of IC 36-4-9-2.

~~(f)~~ (g) The registered voters of the municipality may also file a petition requesting that the question of the abolition of the utility service board be submitted to a referendum. The procedure for filing of the petition and the referendum is the same as that prescribed by subsections ~~(b)~~ (c) through ~~(d)~~ (e)."

Page 1, line 16, after "the" insert ": (A) ".

Page 1, line 17, delete "." and insert "; or (B) board that controls the municipality's municipally owned utilities under IC 8-1.5-3-3(a) if the municipality has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the municipality's storm water facilities by the board that controls the municipality's municipally owned utilities."

Page 2, between lines 16 and 17, begin a new paragraph and insert: "SECTION 6. IC 8-1.5-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) This section applies to all municipalities except a consolidated city.

(b) If the legislative body of a municipality adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) Except as provided in ~~subsection~~ subsections (f) and (g), the board consists of three (3) directors. The executive of the municipality shall appoint the directors, not more than two (2) of whom may be of the same political party.

(d) Except as provided in ~~subsection~~ subsections (f) and (g), the legislative body shall prescribe, by ordinance, the terms of the directors. However, the legislative body must prescribe the initial terms of the directors so that they will be staggered.

(e) The executive may remove a director at any time when, in the judgment of the executive, it is for the best interest of the department.

(f) If a second class city has a department of public sanitation under IC 36-9-25, the executive of the city may appoint the members of the

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board of sanitary commissioners as the board of directors of the department of storm water management. The terms of the members of the board of directors are the same as the terms of the members of the board of sanitary commissioners under IC 36-9-25-4.

**(g) If a municipality:**

**(1) has a board that controls the municipality's municipally owned utilities under IC 8-1.5-3-3(a); and**

**(2) has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the municipality's storm water facilities by the board that controls the municipality's municipally owned utilities;**

**the members of the board that controls the municipality's municipally owned utilities shall serve as the board of directors of the department of storm water management, subject to any transition procedure specified in the ordinance under IC 8-1.5-3-3(b). The terms of the members of the board of directors are the same as the terms of the members of the board that controls the municipality's municipally owned utilities under IC 8-1.5-3-3(a), subject to the completion of any transition procedure specified in the ordinance under IC 8-1.5-3-3(b).**

**(h) A member of the board of directors of the department of storm water management who:**

**(1) is appointed under subsection (f); or**

**(2) is a member of the board under subsection (g) and receives a salary as a member of the board that controls the municipality's municipally owned utilities;**

**is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties."**

Page 8, between lines 22 and 23, begin a new paragraph and insert: "SECTION 19. IC 8-1.5-5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 24. (a) **This section does not apply to a municipality in which the board is the entity that owns or maintains the municipality's sanitary sewer system under an ordinance adopted by the municipality under IC 8-1.5-3-3(a).**

**(b) Whenever work on a storm water system (that is combined with a sanitary sewer system) necessitates the repair or replacement of all or part of a sanitary sewer system, the entity that owns or maintains the sanitary sewer system shall assume a proportionate share of the cost of repairing or replacing the sanitary sewer system.**



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~~(b)~~ (c) The board and the entity that owns or manages the sanitary sewer system shall negotiate the division of the costs described in subsection ~~(a)~~: (b).

~~(c)~~ (d) If the parties cannot agree to a division of the costs, they shall petition the circuit court of the county where the majority of the systems are located to divide the costs. The circuit court shall hold a hearing on the division of costs within sixty (60) days after receiving the petition. The court shall publish notice of the hearing in accordance with IC 5-3-1. The decision of the court is binding on both parties."

Renumber all SECTIONS consecutively.

(Reference is to HB 1798 as printed February 4, 2003.)

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred House Bill No. 1798, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 13, delete "The" and insert **"After receipt of notification from the department of environmental management that the municipality will be subject to storm water regulation under 327 IAC 15-13, the"**.

Page 3, line 12, delete "county not having a consolidated city;" and insert **"county that:**

**(A) does not have a consolidated city; and**

**(B) receives notification from the department of environmental management that the county will be subject to storm water regulation under 327 IAC 15-13;"**.

Page 4, line 38, delete "IC 8-1.5-3-3-(b)" and insert **"IC 8-1.5-3-3(b)"**.

Page 7, line 9, after "after" insert **"holding a hearing and obtaining the"**.

Page 7, line 9, strike "by" and insert **"of"**.

Page 7, line 12, after "system." insert **"The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive."**

Page 7, between lines 16 and 17, begin a new paragraph and insert:

**"(d) The board may use one (1) or more of the following factors to establish the fees authorized by this section:**

- (1) A flat charge for each lot, parcel of property, or building.**
- (2) The amount of impervious surface on the property.**
- (3) The number and size of storm water outlets on the property.**
- (4) The amount, strength, or character of storm water discharged.**
- (5) The existence of improvements on the property that address storm water quality and quantity issues.**
- (6) The degree to which storm water discharged from the property affects water quality in the storm water district.**
- (7) Any other factors the board considers necessary.**

**(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:**

- (1) variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various**



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locations;

**(2) variations in the number of users in various locations; and**

**(3) whether the property is used primarily for residential, commercial, or agricultural purposes."**

Page 8, line 35, strike "in monthly installments".

Page 8, line 35, after "of" insert ":".

Page 8, strike line 36.

Page 8, line 37, after "(A)" insert "**the**".

Page 8, line 38, strike "and".

Page 8, line 39, after "(B)" insert "**the**".

Page 8, line 40, delete "." and insert ";

**(C) the user fees assessed by the municipality under section 7 of this chapter; or**

**(D) any combination of the sources under clauses (A), (B), and (C)."**

Page 9, between lines 2 and 3, begin a new paragraph and insert:

**"(d) Before a municipality imposes the tax levy referred to in subsection (b)(2)(B), the fiscal body of the municipality must give public notice and hold a hearing on the proposal for the tax levy."**

Page 9, line 12, delete "in monthly installments".

Page 9, line 13, delete "of the:" and insert "**of:**".

Page 9, line 14, after "(A)" insert "**the**".

Page 9, line 15, delete "and".

Page 9, line 16, after "(B)" insert "**the**".

Page 9, line 17, delete "." and insert ";

**(C) the user fees assessed by the county under section 7 of this chapter; or**

**(D) any combination of the sources under clauses (A), (B), and (C)."**

Page 9, between lines 21 and 22, begin a new paragraph and insert:

**"(d) Before a county imposes the tax levy referred to in subsection (b)(2)(B), the fiscal body of the county must give public notice and hold a hearing on the proposal for the tax levy."**

Page 12, delete lines 4 through 9.

Page 12, line 39, delete "discharged into the county drainage system." and insert "**discharged.**".

Page 12, line 42, delete "Whether the property has been or will be required to pay" and insert "**The degree to which storm water discharged from the property affects water quality in the district.**".

Page 13, delete lines 1 through 14.

Page 13, line 15, delete "(9)" and insert "(7)".

Page 13, line 18, delete "on variations in:" and insert "**on:**".



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Page 13, line 19, after "(1)" insert **"variations in"**.

Page 13, line 19, delete "furnishing" and insert **"addressing storm water quality and quantity for"**.

Page 13, line 20, delete "services to".

Page 13, line 20, after "users or" delete "to" and insert **"for"**.

Page 13, line 20, after "locations;" delete "or".

Page 13, line 21, after "(2)" insert **"variations in"**.

Page 13, line 21, delete "locations." and insert **"locations; and (3) whether the property is used primarily for residential, commercial, or agricultural purposes."**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1798 as reprinted February 14, 2003.)

GARD, Chairperson

Committee Vote: Yeas 6, Nays 0.

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